



March 22, 2001

Mr. Charles M. Allen, II
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2001-1136

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145245.

The Richardson Police Department (the "department") received a written request for "any and all records" pertaining to a named individual, including a specified investigation of the assault of an elderly person and the arrest of the individual charged with that crime. You state that the department has released the "front sheet information from the Offense/Incident Report along with a redacted copy of the front sheet information of the Arrest Report." *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You state that the department has also released an "Order for Emergency Protection."

We note at the outset that to the extent that the requestor is seeking all department records in which the named individual is identified as a "suspect," the requestor, in essence, is asking that the department compile that individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. Accordingly, the department must withhold all such compilations regarding the named individual where she is identified as a suspect on privacy grounds in conjunction with section 552.101 of the Government Code.¹

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We now address whether the specifically requested documents are excepted from public disclosure. You contend that these records are excepted from disclosure under section 552.108 of the Government Code. Based on your representation that the information at issue relates to a pending criminal prosecution, we conclude that in this instance you have met your burden of demonstrating the applicability of section 552.108(a)(1). The department therefore may withhold the remaining information at issue pursuant to section 552.108(a)(1) of the Government Code, with the following exceptions.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Basic information includes both booking and bonding information. Open Records Decision No. 127 at 3 (1976). Accordingly, the basic booking and bonding information contained in the records at issue may not be withheld pursuant to section 552.108 and therefore must be released.

We also note that some the records at issue may be subject to section 552.022 of the Government Code. Section 552.022(a) of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(17) information that is also contained in a public court record.

To the extent that any of the records at issue have been filed with a court, those records may not be withheld under the exceptions you raised and therefore must be released to the requestor. However, the remaining records may be withheld under section 552.108(a)(1), except as discussed above.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen P. Agan", with a long horizontal flourish extending to the right.

Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/RWP/seg

Ref: ID# 145245

Encl. Submitted documents

cc: Ms. Karen Thomason
Cook, Yancey, King & Galloway
P.O. Box 22260
Shreveport, Louisiana 71120-2260
(w/o enclosures)